IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 120 of 2007()

CC.221/2006 of CHIEF JUDICIAL MAGISTRATE, KALPETTA
CRIME NO. 85/04 OF VYTHIRI POLICE STATION

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PETITIONER: ACCUSED NO.4 & 5:

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1. A.K. RIJU, S/O. KELUKKUTTY,
AGED 31 YEARS, RESIDING AT AREEKKARA KANDI HOUSE,
M.M. PARAMBU POST, UNNIKULAM AMSOM, KOZHIKODE.

2. K. UNNIKRISHNAN, S/O. VISWANATHAN,
AGED 30 YEARS, KONDEKATTU HOUSE, AZHINJILAM P.O.,
VAZHAKKAL AMSOM, MALAPPURAM DISTRICT.

BY ADV. SRI.GEO PAUL
SRI.SANU MATHEW
SRI.C.R.PRAMOD
SRI.SANDEEP M.B.KADATHY

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY CIRCLE INSPECTOR, VYTHIRI,
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 120 of 2007

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Dated this the 17th day of January, 2007

O R D E R

The petitioners are accused Nos. 4 and 5 in a prosecution, inter alia, under section 3 of the Immoral Traffic (Prevention) Act, 1956. The offence alleged against the petitioners is a warrant offence. Cognizance has been taken on the basis of the final report submitted by the police after due investigation.

2. The crux of the allegations is that the petitioners, along with other accused persons, were found indulging in the activity of running a brothel and in promiscuous sexual intercourse at a named premises. I do not want to go into the details of the case in this order. Cognizance has been taken by the learned Magistrate. The petitioners have been summoned to appear. It is their contention that the allegations do not justify initiation of prosecution against them. In the nature of the allegations raised, I am satisfied that this is not a fit case where the extra ordinary inherent jurisdiction can or ought to be invoked in favour of the petitioners. In every case where a discharge or acquittal is a possibility, it is not for this Court to invoke

the powers under Section 482 Cr.P.C. It is for such accused persons to appear before the learned Magistrate and claim premature termination of the prosecution. The learned Magistrate is bound to consider such claim under Section 239/240 Cr.P.C. This is not to say that in an appropriate case this Court cannot resort to the powers under Section 482 Cr.P.C. But I am satisfied that this is not a fit case where such extra ordinary inherent jurisdiction ought to be invoked to save the petitioners of their responsibility to appear before the the learned Magistrate and claim discharge/acquittal.

3. This Crl.M.C. is hence dismissed. But I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioners to claim discharge/acquittal at the appropriate stage before the learned Magistrate.

(R. BASANT)
Judge

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